

Senate Engrossed House Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 114

HOUSE BILL 2177

AN ACT

AMENDING SECTIONS 10-11602 AND 33-1248, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 9, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1258; AMENDING SECTION 33-1804, ARIZONA REVISED STATUTES; AMENDING TITLE 33, CHAPTER 16, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 33-1805; RELATING TO HOMEOWNERS' ASSOCIATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 10-11602, Arizona Revised Statutes, is amended to
3 read:

4 10-11602. Inspection of records by members

5 A. Subject to subsections E and F of this section, any member who has
6 been a member of record at least six months immediately preceding its demand
7 is entitled to inspect and copy any of the records of the corporation
8 described in section 10-11601, subsection E during regular business hours at
9 the corporation's principal office, if the member gives the corporation
10 written notice of its demand as provided in section 10-3141 at least five
11 business days before the date on which the member wishes to inspect and copy.

12 B. Subject to subsections E and F of this section, a member who has
13 been a member of record at least six months immediately preceding its demand
14 is entitled to inspect and copy any of the following records of the
15 corporation during regular business hours at a reasonable location specified
16 by the corporation, if the member meets the requirements of subsection C of
17 this section and gives the corporation written notice of its demand as
18 provided in section 10-3141 at least five business days before the date on
19 which the member wishes to inspect and copy the following:

20 1. Excerpts from any records required to be maintained under section
21 10-11601, subsection A, to the extent not subject to inspection under
22 subsection A of this section.

23 2. Accounting records of the corporation.

24 3. Subject to section 10-11605, the membership list described in
25 section 10-11601, subsection C.

26 4. The corporation's most recent financial statements showing in
27 reasonable detail its assets and liabilities and the results of its
28 operations.

29 C. A member may inspect and copy the records identified in subsection
30 B of this section only if the following conditions are met:

31 1. The member's demand is made in good faith and for a proper purpose.

32 2. The member describes with reasonable particularity the member's
33 purpose and the records the member desires to inspect.

34 3. The records are directly connected with the member's purpose.

35 D. This section does not affect either:

36 1. The right of a member to inspect records under section 10-3720 or,
37 if the member is in litigation with the corporation, to the same extent as
38 any other litigant.

39 2. The power of a court, independently of chapters 24 through 40 of
40 this title, to compel the production of corporate records for examination on
41 proof by a member of proper purpose.

42 E. The articles of incorporation or bylaws of a corporation organized
43 primarily for religious purposes may limit or abolish the right of a member
44 under this section to inspect and copy any corporate record.

1 F. Unless the board of directors has provided express permission to
2 the member, a member of a corporation that is a ~~condominium association or~~
3 ~~rural electric cooperative or a planned community association~~ is not entitled
4 to inspect or copy any records, documents or other materials that are
5 maintained by or in the possession of the corporation and that relate to any
6 of the following:

- 7 1. Personnel matters or a person's medical records.
- 8 2. Communications between an attorney for the corporation and the
9 corporation.
- 10 3. Pending or contemplated litigation.
- 11 4. Pending or contemplated matters relating to enforcement of the
12 corporation's documents or rules.
- 13 ~~5. Meeting minutes or other records of a session of a board meeting~~
14 ~~or a members' meeting that is not required to be open to all members pursuant~~
15 ~~to section 33-1248 or 33-1804.~~

16 G. SECTIONS 33-1258 AND 33-1805, RELATING TO ASSOCIATION FINANCIAL AND
17 OTHER RECORDS, APPLY TO ANY CORPORATION THAT IS A CONDOMINIUM AS DEFINED IN
18 SECTION 33-1202 OR A PLANNED COMMUNITY AS DEFINED IN SECTION 33-1802.

19 Sec. 2. Section 33-1248, Arizona Revised Statutes, is amended to read:
20 33-1248. Open meetings; exceptions

21 A. Notwithstanding any provision in the declaration, bylaws or other
22 documents to the contrary, all meetings of the association and board of
23 directors, EXCEPT FOR AN ASSOCIATION OR BOARD OF DIRECTORS FOR A TIMESHARE
24 PLAN AS DEFINED IN SECTION 32-2197, are open to all members of the
25 association OR ANY PERSON DESIGNATED BY A MEMBER IN WRITING AS THE MEMBER'S
26 REPRESENTATIVE and all members OR DESIGNATED REPRESENTATIVES so desiring
27 shall be permitted to attend and ~~listen to~~ SPEAK AT AN APPROPRIATE TIME
28 DURING the deliberations and proceedings. ~~except that, for regular and~~
29 ~~special meetings of the board, association members who are not board members~~
30 ~~may not participate in any deliberation or discussion unless expressly so~~
31 ~~authorized by a vote of the majority of a quorum of the board. THE BOARD MAY~~
32 PLACE REASONABLE TIME RESTRICTIONS ON THOSE PERSONS SPEAKING DURING THE
33 MEETING BUT SHALL PERMIT A MEMBER OR A MEMBER'S DESIGNATED REPRESENTATIVE TO
34 SPEAK BEFORE THE BOARD TAKES FORMAL ACTION ON AN ITEM UNDER DISCUSSION IN
35 ADDITION TO ANY OTHER OPPORTUNITIES TO SPEAK. THE BOARD SHALL PROVIDE FOR
36 A REASONABLE NUMBER OF PERSONS TO SPEAK ON EACH SIDE OF AN ISSUE. Any
37 portion of a meeting may be closed only if that portion of the meeting is
38 limited to consideration of one or more of the following:

39 1. ~~Employment or personnel matters for employees of the board or the~~
40 ~~association.~~

41 2. 1. Legal advice from an attorney for the board or the association.
42 ON FINAL RESOLUTION OF ANY MATTER FOR WHICH THE BOARD RECEIVED LEGAL ADVICE
43 OR THAT CONCERNED PENDING OR CONTEMPLATED LITIGATION, THE BOARD MAY DISCLOSE
44 INFORMATION ABOUT THAT MATTER IN AN OPEN MEETING EXCEPT FOR MATTERS THAT ARE

1 REQUIRED TO REMAIN CONFIDENTIAL BY THE TERMS OF A SETTLEMENT AGREEMENT OR
2 JUDGMENT.

3 ~~3.~~ 2. Pending or contemplated litigation.

4 ~~4. Pending or contemplated matters relating to enforcement of the~~
5 ~~association's documents or rules.~~

6 3. PERSONAL, HEALTH AND FINANCIAL INFORMATION ABOUT AN INDIVIDUAL
7 MEMBER OF THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN
8 INDIVIDUAL EMPLOYEE OF A CONTRACTOR FOR THE ASSOCIATION.

9 4. MATTERS RELATING TO THE JOB PERFORMANCE OF, COMPENSATION OF, HEALTH
10 RECORDS OF OR SPECIFIC COMPLAINTS AGAINST AN INDIVIDUAL EMPLOYEE OF THE
11 ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR OF THE ASSOCIATION WHO
12 WORKS UNDER THE DIRECTION OF THE ASSOCIATION.

13 B. Notwithstanding any provision in the condominium documents and
14 except for associations for a timeshare plan as defined in section 32-2197,
15 all meetings of the association and the board shall be held in this state.
16 A meeting of the association shall be held at least once each year. Special
17 meetings of the association may be called by the president, by a majority of
18 the board of directors or by unit owners having at least twenty-five per
19 cent, or any lower percentage specified in the bylaws, of the votes in the
20 association. Unless otherwise provided in the articles or the bylaws of the
21 association, not fewer than ten nor more than fifty days in advance of any
22 meeting of the unit owners, the secretary shall cause notice to be
23 hand-delivered or sent prepaid by United States mail to the mailing address
24 of each unit or to any other mailing address designated in writing by the
25 unit owner. The notice of any meeting of the unit owners shall state the
26 time and place of the meeting. The notice of any special meeting of the unit
27 owners shall also state the purpose for which the meeting is called,
28 including the general nature of any proposed amendment to the declaration or
29 bylaws, any changes in assessments that require approval of the unit owners
30 and any proposal to remove a director or officer. The failure of any unit
31 owner to receive actual notice of a meeting of the unit owners does not
32 affect the validity of any action taken at that meeting.

33 C. Unless otherwise provided in the articles or bylaws of the
34 association, for meetings of the board of directors that are held after the
35 termination of declarant control of the association, notice to unit owners
36 of meetings of the board of directors shall be given at least forty-eight
37 hours in advance of the meeting by newsletter, conspicuous posting or any
38 other reasonable means as determined by the board of directors. An affidavit
39 of notice by an officer of the association is prima facie evidence that
40 notice was given as prescribed by this section. Notice to unit owners of
41 meetings of the board of directors is not required if emergency circumstances
42 require action by the board before notice can be given. Any notice of a
43 board meeting shall state the time and place of the meeting. The failure of
44 any unit owner to receive actual notice of a meeting of the board of
45 directors does not affect the validity of any action taken at that meeting.

1 Sec. 3. Title 33, chapter 9, article 3, Arizona Revised Statutes, is
2 amended by adding section 33-1258, to read:

3 33-1258. Association financial and other records

4 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, ALL FINANCIAL
5 AND OTHER RECORDS OF THE ASSOCIATION SHALL BE MADE REASONABLY AVAILABLE FOR
6 EXAMINATION BY ANY MEMBER OR ANY PERSON DESIGNATED BY THE MEMBER IN WRITING
7 AS THE MEMBER'S REPRESENTATIVE.

8 B. BOOKS AND RECORDS KEPT BY OR ON BEHALF OF THE ASSOCIATION AND THE
9 BOARD MAY BE WITHHELD FROM DISCLOSURE TO THE EXTENT THAT THE PORTION WITHHELD
10 RELATES TO ANY OF THE FOLLOWING:

11 1. PRIVILEGED COMMUNICATION BETWEEN AN ATTORNEY FOR THE ASSOCIATION
12 AND THE ASSOCIATION.

13 2. PENDING OR CONTEMPLATED LITIGATION.

14 3. MEETING MINUTES OR OTHER RECORDS OF A SESSION OF A BOARD MEETING
15 THAT IS NOT REQUIRED TO BE OPEN TO ALL MEMBERS PURSUANT TO SECTION 33-1248.

16 4. PERSONAL, HEALTH AND FINANCIAL RECORDS OF AN INDIVIDUAL MEMBER OF
17 THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN INDIVIDUAL
18 EMPLOYEE OF A CONTRACTOR FOR THE ASSOCIATION.

19 5. RECORDS RELATING TO THE JOB PERFORMANCE OF, COMPENSATION OF, HEALTH
20 RECORDS OF OR SPECIFIC COMPLAINTS AGAINST AN INDIVIDUAL EMPLOYEE OF THE
21 ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR OF THE ASSOCIATION WHO
22 WORKS UNDER THE DIRECTION OF THE ASSOCIATION.

23 C. THE ASSOCIATION SHALL NOT BE REQUIRED TO DISCLOSE FINANCIAL AND
24 OTHER RECORDS OF THE ASSOCIATION IF DISCLOSURE WOULD VIOLATE ANY STATE OR
25 FEDERAL LAW.

26 D. THIS SECTION DOES NOT APPLY TO AN ASSOCIATION FOR A TIMESHARE PLAN
27 AS DEFINED IN SECTION 32-2197.

28 Sec. 4. Section 33-1804, Arizona Revised Statutes, is amended to read:

29 33-1804. Open meetings; exceptions

30 A. Notwithstanding any provision in the declaration, bylaws or other
31 documents to the contrary, all meetings of the association and board of
32 directors are open to all members of the association OR ANY PERSON DESIGNATED
33 BY A MEMBER IN WRITING AS THE MEMBER'S REPRESENTATIVE and all members OR
34 DESIGNATED REPRESENTATIVES so desiring shall be permitted to attend and
35 ~~listen to~~ SPEAK AT AN APPROPRIATE TIME DURING the deliberations and
36 ~~proceedings except that, for regular and special meetings of the board,~~
37 ~~association members who are not board members may not participate in any~~
38 ~~deliberation or discussion unless expressly so authorized by a vote of the~~
39 ~~majority of a quorum of the board.~~ THE BOARD MAY PLACE REASONABLE TIME
40 RESTRICTIONS ON THOSE PERSONS SPEAKING DURING THE MEETING BUT SHALL PERMIT
41 A MEMBER OR MEMBER'S DESIGNATED REPRESENTATIVE TO SPEAK BEFORE THE BOARD
42 TAKES FORMAL ACTION ON AN ITEM UNDER DISCUSSION IN ADDITION TO ANY OTHER
43 OPPORTUNITIES TO SPEAK. THE BOARD SHALL PROVIDE FOR A REASONABLE NUMBER OF
44 PERSONS TO SPEAK ON EACH SIDE OF AN ISSUE. Any portion of a meeting may be

1 closed only if that closed portion of the meeting is limited to consideration
2 of one or more of the following:

3 ~~1. Employment or personnel matters for employees of the board or the~~
4 ~~association.~~

5 ~~2.~~ 1. Legal advice from an attorney for the board or the association.
6 ON FINAL RESOLUTION OF ANY MATTER FOR WHICH THE BOARD RECEIVED LEGAL ADVICE
7 OR THAT CONCERNED PENDING OR CONTEMPLATED LITIGATION, THE BOARD MAY DISCLOSE
8 INFORMATION ABOUT THAT MATTER IN AN OPEN MEETING EXCEPT FOR MATTERS THAT ARE
9 REQUIRED TO REMAIN CONFIDENTIAL BY THE TERMS OF A SETTLEMENT AGREEMENT OR
10 JUDGMENT.

11 ~~3.~~ 2. Pending or contemplated litigation.

12 ~~4. Pending or contemplated matters relating to enforcement of the~~
13 ~~association's documents or rules.~~

14 3. PERSONAL, HEALTH AND FINANCIAL INFORMATION ABOUT AN INDIVIDUAL
15 MEMBER OF THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN
16 INDIVIDUAL EMPLOYEE OF A CONTRACTOR FOR THE ASSOCIATION.

17 4. MATTERS RELATING TO THE JOB PERFORMANCE OF, COMPENSATION OF, HEALTH
18 RECORDS OF OR SPECIFIC COMPLAINTS AGAINST AN INDIVIDUAL EMPLOYEE OF THE
19 ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR OF THE ASSOCIATION WHO
20 WORKS UNDER THE DIRECTION OF THE ASSOCIATION.

21 B. Notwithstanding any provision in the community documents, all
22 meetings of the association and the board shall be held in this state. A
23 meeting of the association shall be held at least once each year. Special
24 meetings of the association may be called by the president, by a majority of
25 the board of directors or by members having at least twenty-five per cent,
26 or any lower percentage specified in the bylaws, of the votes in the
27 association. Unless otherwise provided in the articles or bylaws of the
28 association, not fewer than ten nor more than fifty days in advance of any
29 meeting of the members the secretary shall cause notice to be hand-delivered
30 or sent prepaid by United States mail to the mailing address for each lot,
31 parcel or unit owner or to any other mailing address designated in writing
32 by a member. The notice shall state the time and place of the meeting. A
33 notice of any special meeting of the members shall also state the purpose for
34 which the meeting is called, including the general nature of any proposed
35 amendment to the declaration or bylaws, changes in assessments that require
36 approval of the members and any proposal to remove a director or an officer.
37 The failure of any member to receive actual notice of a meeting of the
38 members does not affect the validity of any action taken at that meeting.

39 C. Unless otherwise provided in the articles or bylaws of the
40 association, for meetings of the board of directors that are held after the
41 termination of declarant control of the association, notice to members of
42 meetings of the board of directors shall be given at least forty-eight hours
43 in advance of the meeting by newsletter, conspicuous posting or any other
44 reasonable means as determined by the board of directors. An affidavit of
45 notice by an officer of the corporation is prima facie evidence that notice

1 was given as prescribed by this section. Notice to members of meetings of
2 the board of directors is not required if emergency circumstances require
3 action by the board before notice can be given. Any notice of a board
4 meeting shall state the time and place of the meeting. The failure of any
5 member to receive actual notice of a meeting of the board of directors does
6 not affect the validity of any action taken at that meeting.

7 Sec. 5. Title 33, chapter 16, article 1, Arizona Revised Statutes, is
8 amended by adding section 33-1805, to read:

9 33-1805. Association financial and other records

10 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, ALL FINANCIAL
11 AND OTHER RECORDS OF THE ASSOCIATION SHALL BE MADE REASONABLY AVAILABLE FOR
12 EXAMINATION BY ANY MEMBER OR ANY PERSON DESIGNATED BY THE MEMBER IN WRITING
13 AS THE MEMBER'S REPRESENTATIVE.

14 B. BOOKS AND RECORDS KEPT BY OR ON BEHALF OF THE ASSOCIATION AND THE
15 BOARD MAY BE WITHHELD FROM DISCLOSURE TO THE EXTENT THAT THE PORTION WITHHELD
16 RELATES TO ANY OF THE FOLLOWING:

17 1. PRIVILEGED COMMUNICATION BETWEEN AN ATTORNEY FOR THE ASSOCIATION
18 AND THE ASSOCIATION.

19 2. PENDING OR CONTEMPLATED LITIGATION.

20 3. MEETING MINUTES OR OTHER RECORDS OF A SESSION OF A BOARD MEETING
21 THAT IS NOT REQUIRED TO BE OPEN TO ALL MEMBERS PURSUANT TO SECTION 33-1804.

22 4. PERSONAL, HEALTH AND FINANCIAL RECORDS OF AN INDIVIDUAL MEMBER OF
23 THE ASSOCIATION, AN INDIVIDUAL EMPLOYEE OF THE ASSOCIATION OR AN INDIVIDUAL
24 EMPLOYEE OF A CONTRACTOR FOR THE ASSOCIATION.

25 5. RECORDS RELATING TO THE JOB PERFORMANCE OF, COMPENSATION OF, HEALTH
26 RECORDS OF OR SPECIFIC COMPLAINTS AGAINST AN INDIVIDUAL EMPLOYEE OF THE
27 ASSOCIATION OR AN INDIVIDUAL EMPLOYEE OF A CONTRACTOR OF THE ASSOCIATION WHO
28 WORKS UNDER THE DIRECTION OF THE ASSOCIATION.

29 C. THE ASSOCIATION SHALL NOT BE REQUIRED TO DISCLOSE FINANCIAL AND
30 OTHER RECORDS OF THE ASSOCIATION IF DISCLOSURE WOULD VIOLATE ANY STATE OR
31 FEDERAL LAW.

APPROVED BY THE GOVERNOR APRIL 19, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2004.